



ATTENTION

Probate cases on this calendar are currently under review by the probate examiners. Review of some probate cases may not be completed and therefore have not been posted.

If your probate case has not been posted please check back again later.

Thank you for your patience.

(1) First and Final Account and Report of Administrator and Petition for Its Settlement, (2) for Allowance of Compensation to Administrator and Attorney for Ordinary Services and (3) for Final Distribution

Age: 3/30/2003		DARRELL DEAN MOBLEY , Administrator, is petitioner.	NEEDS/PROBLEMS/COMMENTS: 1. Creditor's Claims filed by; Fancher Creek Packing, MBNA, Sears, Cade Ranch and Bank of America were rejected on 1/8/14. The claimants have 90 days in which to file an action on the rejected claim. Therefore it appears that the estate will not be in a condition to close until after April 8, 2014.
		Account period: 3/30/03 – 12-30-13	
Cont. from		Accounting - \$47,681.92	
<input type="checkbox"/>	Aff.Sub.Wit.	Beginning POH - \$44,678.65	
<input checked="" type="checkbox"/>	Verified	Ending POH - \$22,857.99	
<input checked="" type="checkbox"/>	Inventory	Administrator (statutory) - \$1,907.28	
<input checked="" type="checkbox"/>	PTC	Attorney (statutory) - \$1,907.28	
<input checked="" type="checkbox"/>	Not.Cred.	Closing - \$2,000.00	
<input checked="" type="checkbox"/>	Notice of Hrg	W/O	
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<input checked="" type="checkbox"/>	Letters	6/17/03	
	Duties/Supp		
	Objections		
	Video Receipt		
	CI Report		
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	Status Rpt		
	UCCJEA		
	Citation		
	FTB Notice	N/A	
Distribution of property on hand in partial satisfaction of their creditor's claim is to: Franchise Tax Board - \$17,043.43			Reviewed by: KT Reviewed on: 3/5/14 Updates: Recommendation: File 1 – Mobley

Second Account Current of Trustee

DOD: 4-14-12		ESTHER F. SOTELO , Granddaughter and Trustee with bond of \$10,000.00, is Petitioner. Account period: 1-1-11 through 12-31-13 Accounting: \$207,070.34 Beginning POH: \$200,000.00 Ending POH: \$200,000.00 (real property)	NEEDS/PROBLEMS/COMMENTS: <u>SEE ADDITIONAL PAGES</u>
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<input checked="" type="checkbox"/>	Notice of Hrg	Trustee: Petitioner requests fees to be deferred until the trust is ready for distribution Attorney: Petitioner requests fees to be deferred until the trust is ready for distribution	
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<input type="checkbox"/>	Video Receipt		Petitioner states Mrs. Esther Sotelo died on 4-14-12. The trust has been kept open because the trustee wants to maximize the return on sale of the trust's principal asset, a house in Pasadena, Ca., prior to distribution. There was substantial deferred maintenance on the property when the Sotelo Conservatorship (03CEPR01364) was first established. The trustee has personally made several trips to perform repairs and improvements, and a caretaker, who has been residing at the property, has invested a substantial sum of money in repairs in exchange for rent.
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<input type="checkbox"/>	FTB Notice		
Petitioner prays that:			
1. Notice of the hearing of this Account, Report, and Petition be given as required by law;			
2. The Court make an order approving, allowing, and settling the second account and report of the trustee and granting the petition as filed;			
3. The Court defer ruling on compensation for Petitioner and her attorneys until the estate has funds to pay such compensation; and			
4. Such other relief be granted as the Court considers proper.			

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1. Receipts Schedule is missing receipts from January 2011 through November 2011 (Social Security income, etc.).
2. Need account statements pursuant to Probate Code §2620.
3. Article V requires distribution of the trust upon the death of the grantor. Mrs. Sotelo died almost two years ago, but this petition is not filed as a final account and Petitioner does not indicate a time frame for distribution and termination of the trust; only that she wants to maximize the return on sale prior to distribution. The trust needs to be terminated. The Court will set a status hearing for termination. See below.
4. Examiner is unable to determine from this trust file whether Petitioner is now the sole beneficiary, or whether there are others. The trust states that after the Grantor's death, the trustee shall allocate the assets into equal shares for the living children of the Grantor's deceased son Andrew Sotelo. The file indicates that Petitioner is Andrew Sotelo's daughter; however, it is unclear if she has siblings. Need clarification: Did Andrew Sotelo have any other children? Who are the other relatives that were sent notice of this hearing?

(Please note that although this information may have been previously provided to the Court in prior filings or in the conservatorship file, that file is located at the Court's archives and is not available at this time. All necessary information should always be included in the instant petitions rather than relying on Examiner to research years and volumes of past filings.)

5. Attorney Nancy LeVan filed a Request for Special Notice in this trust proceeding, which indicates that there may be payment owing in connection with the conservatorship proceeding. The Court require clarification as to whether all of the conservatee's final bills have been paid, since she passed away approx. two years ago.
6. It appears the trustee's bond amount of \$10,000.00 was based on the conservatorship bond and the conservatee's income, and did not need to cover the real property because sale of the conservatee's real property would require Court oversight during her lifetime. However, at this time, the Court may require further information to determine if increased bond is needed to protect other beneficiaries during the final administration of the trust.

Note: The Court will set a status hearing for the filing of the final account and petition for final distribution for Friday 6-13-14.

**Petition to Determine Title and Request Transfer of Personal Property to the Estate
and Assess Statutory Damages Thereto Against Mary J. Quin**

DOD: 3-31-10		JOSEPH W. MARTIN , Administrator with Full IAEA without bond, is Petitioner. Petitioner states he is an 86 year old man and is the duly appointed administrator of the estate. Petitioner is the decedent's spouse and intestate heir to the decedent's estate. The decedent is Petitioner's second wife and is unrelated to Mary Quin, Petitioner's daughter from his first wife. After decedent's death, Petitioner requested that his daughter Mary Quin, a licensed California attorney, assist with the transfer of PG&E stock issued in the decedent's name. Quin held herself out as a qualified probate attorney and Petitioner trusted her to provide competent legal services and counsel after the death of his wife. Unknown to Petitioner, Quin prepared a revocable living trust, will, durable powers of attorney and related documents for Petitioner. Quin brought these documents to Petitioner on 4-24-10 and required him to sign documents that eventually appointed Quin as trustee and gave herself control over Petitioner's life savings, without Petitioner's consent and knowledge and with the intent to defraud and eventually embezzle and convert his life savings, as well as the decedent's assets. Petitioner states Quin obtained a Schwab Attorney-in-Fact Agreement and Affidavit of Attorney-in-Fact for Non-Schwab Power of Attorney for Theresa Martin's and Petitioner's Charles Schwab accounts and then converted, embezzled, and stole both IRA accounts, using the POA, to take the decedent's Schwab IRA, which was to go to Petitioner and as successor trustee, to gain control over Petitioner's Schwab IRA. Petitioner states Quin replaced Petitioner's mailing address on the Schwab accounts to her law office address, and changed the phone number to her law office number. She never informed him that she had taken control of the accounts and had statements forwarded.	NEEDS/PROBLEMS/COMMENTS: Note: Related civil litigation 12CECG03130 Joseph W. Martin v. Mary J. Quin has upcoming hearing scheduled 4-3-14. See status report. <u>Continued from 12-18-13, 1-6-14</u> Minute Order 1-6-14: The Court is advised that the matter has been resolved and they are in the process of preparing an agreement. Status Report filed 3-4-14 by Attorney McCloskey (not verified by Administrator) states: The parties agreed to mediation in the civil action and a Petition to Approve Compromise of Pending Action is now pending in that Court, set for hearing on 4-23-14 in Dept. 403. It is the Administrator's intention to request dismissal of this Petition to Determine Title once the settlement of the other case is approved by Judge Culver Kapetan. The Administrator currently resides at an assisted living facility and has mobility issues that make it difficult to attend the hearing and asks that he be excused from attending this hearing. Note: This information is provided by the Examiner for status purposes only: A status hearing in this estate is scheduled for 5-30-14 for the filing of the petition for final distribution. However, Examiner notes that a Final Inventory and Appraisal has not yet been filed.
Cont. from 121813, 010614			
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SEE ADDITIONAL PAGES

Petitioner states that on 4-24-10, Quin required Petitioner to give Quin a blank check that the Decedent, Theresa Martin, had executed prior to date of death, drawn on an estate asset, the decedent's United Security Bank account. Quin required Petitioner to make the check payable to Quin's law offices. See Exhibit C. Quin advised Petitioner at the time that she would use this money in Decedent's bank account to obtain the PG&E stock for Petitioner that was held in the decedent's name.

Petitioner states Quin never attempted to obtain the PG&E stock, and, despite Quin's self-professed expertise in probate proceedings and estate planning, Quin never attempted to probate the estate.

Petitioner states Quin deposited the check in September 2010 to her law office account. Quin knew or should have known that decedent's checking account was an estate asset, and as such, her acceptance and negotiation of the check was illegal and improper, and that the estate, given the decedent also owned a single family residence, needed to be formally probated.

In January 2012, Petitioner contacted Charles Schwab by telephone to inquire about his life savings, the IRA accounts. Petitioner was informed that decedent's and his accounts had been depleted completely by Quin using the durable power of attorney.

At no time did Petitioner intentionally, knowingly or willingly gift and/or loan the assets that made up his life savings, the brokerage and IRA Rollover accounts at Charles Schwab to Quin.

In Feb. 2012, Petitioner first contacted his attorney, Babette Fischer, who made a demand on Quin to return the \$40,000, make an accounting, and return the money that she had embezzled and stole to the accounts. Fischer also terminated Quin's powers revoked in writing by Petitioner. See attached.

Petitioner filed a complaint with the California State Bar regarding Quin's conduct as an attorney, and has been informed that the State Bar is holding its investigation pending the outcome of civil litigation that Petitioner has initiated as well against Quin regarding her fraud and deceit.

Prior to her death, the decedent kept a separate property checking account at United Security Bank xxx049 that contained approx. \$40,000 prior to her death. On or about 9-1-10, Quin deposited the decedent's estate check from that account that Quin required Petitioner give her April 2010 into Quin's law office trust account. On 9-8-10, Quin converted that estate, asset to her own personal use.

Petitioner states Quin intentionally defrauded the Petitioner and the estate of that account and the Schwab accounts. Quin knew the estate should have been probated but that Quin could negotiate the blank check executed by the decedent prior to her death and then convert the money to her own use. Quin engaged the petitioner unwittingly in an illegal act, in presenting the check for negotiation after the decedent's death. Petitioner did not know that the law requires the account to be probated in some form under California law.

Petitioner states Quin took the estate account under the guise of assisting petitioner in acquiring the stock held by decedent.

SEE ADDITIONAL PAGES

Page 3

Petitioner and Quin have only seen each other sporadically in many years. The last time Quin and Petitioner met was on 4-24-10 when Quin defrauded Petitioner into executing a living trust naming Quin as trustee and allowing Quin to take his brokerage and IRA rollover accounts, and giving Quin the \$40,000 check. Quin, with malice and bad intent then concocted the gift and loan scheme to defraud her father of both his life savings as well as the decedent's.

Petitioner believes Quin's actions are malicious and outrageous requiring application of Probate Code §859.

Petitioner requests pursuant to Probate Code §850(a)(2)(D) that title to the above described money is vested in Petitioner as administrator of the estate. Petitioner further requests the Court find and hold Mary Quin as a constructive trustee of those funds and hold the proceeds of that account for the estate of Theresa Martin.

Petitioner further requests that the Court issue a citation pursuant to Probate Code §1240 for Mary J. Quin to appear and state why she cashed a \$40,000 check on Decedent's United Security Bank account more than five months after decedent's death and why she should not be required to reimburse decedent's estate.

Petitioner prays for an order as follows:

1. Quin be ordered to pay Petitioner as Administrator of the Estate of Theresa Martin the net proceeds of the above-described property; and
2. Quin be declared a constructive trustee of the proceeds of the above-described property for the benefit of the Estate of Theresa Martin; and
3. A citation be issued to Mary J. Quin to appear and state why she cashed a \$40,000 check on decedent's United Security Bank account more than 30 days after decedent's death; and
4. A finding that Quin in bad faith has taken, concealed, or disposed of the property by the use of undue influence in bad faith and through the commission of elder or dependent adult financial abuse, as defined in Section 15610.30 of the W&I Code, the property of the Estate of Theresa Martin, to wit: United Security Bank checking account No. xxx049 in the amount of \$40,000; and
5. A finding and order that Mary Quin is liable for twice the value of the property recovered by this action pursuant to Probate Code §859; and
6. An order that Quin pay Petitioner's costs and attorney fees herein; and
7. Such other remedies available in law or equity that the Court would deem just and proper.

Note: The proposed order does not appear to include the constructive trust or other findings. See proposed order.

Petitioner also filed Notice of Request for Court to Take Judicial Notice and Memorandum of Points and Authorities in Support Thereof, with reference to First Amended Complaint filed 2-5-13 in 12CECG03130.

Note: On 12-6-13, Respondent Mary J. Quin filed an ex parte request to continue the hearing from its originally scheduled date of 12-18-13. This Court's order filed 12-9-13 continued the matter to this date.

However, as of this date, it does not appear that any objection or response has yet been filed in this matter by Ms. Quin.

4A **Stephen & Debbra Winter Revocable Trust 2/16/94 Case No. 13CEPR00564**
Atty **Pape, Jeffrey B. (for Dennis Freeman – Successor Trustee under Amendment/Petitioner)**
Atty **Shahbazian, Steven L. (for Christopher Lull – son of Debbra Winter/Respondent-Objector)**
Petition to Determine Title to and Require Transfer of Property to Trust [Prob. C. 850(a)(2)(3), 855, 17200(b)(6)]

Stephan DOD: 08/09/05		DENNIS FREEMAN , successor trustee, is Petitioner. Petitioner states: 1. Stephan F. Winter and Debbra L. Winter ("Settlers") executed the Stephan F. Winter and Debbra L. Winter Revocable Trust (the "Trust") on 02/16/94 in their capacity as Settlers and initial Trustees. The Trust was amended on 09/14/02. 2. Petitioner is the currently acting successor trustee of the Trust. 3. This petition concerns the ownership of the original Trust documents which Christopher Lull ("Respondent") or his agents have taken possession of and refused to deliver to the trustee. 4. The Settlor's maintained the original trust documents in a binder. Shortly before her death, Debbra delivered the binder to real estate agent Michele Lane in connection with a real estate transaction. The real estate agent had possession of the binder when Debbra died and maintained possession of it, refusing to deliver it to anyone without a court order. Thereafter, Respondent's attorney, Sue Campbell, represented to Michele Lane that the family agreed that it was ok that Ms. Lane release the binder to Respondent in care of attorney Sue Campbell. 5. This was not acceptable to Petitioner because (1) Petitioner was the trustee and not respondent, and (2) Respondent, Debbra's son, had been intentionally omitted from the Trust due to a long standing estranged relationship. 6. Petitioner has demanded the release of the trust binder from Respondent's former attorney, Sue Campbell; however, initially Sue Campbell's assistant professed no knowledge of a binder being picked up by her office and later Sue Campbell professed no knowledge of a binder being picked up from Michele Lane. Petitioner's demands that Respondent deliver the binder to Petitioner's attorney have been ignored. Petitioner prays for an Order: 1. Declaring that Petitioner is the sole owner of the original trust documents and that Respondent has no interest in the original trust documents. 2. Directing Respondent to immediately deliver possession to Petitioner of any and all trust documents including but not limited to the original Trust, original Trust amendment, and the estate planning binder. <div style="text-align: right;">Continued on Page 2</div>	NEEDS/PROBLEMS/COMMENTS:	
Debbra DOD: 05/13/13			CONTINUED FROM 01/28/14	
			1. Need Order.	
Cont. from 081213, 102113, 112013, 120913, 010614, 012814				
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		Reviewed by: JF Reviewed on: 03/05/14 Updates: Recommendation: File 4A – Winter		

Objection filed 08/07/13 by Christopher Lull, Respondent, states:

1. Petitioner does not have standing to bring this Petition. Petitioner is not the trustee because the amendment naming him as trustee was revoked. Morgan Quail witnessed the destruction of the amendment (see *Declaration of Morgan Quail*). Without the amendment, Petitioner is not the trustee or a beneficiary of the Trust and has no vested interest in the Trust.
2. Petitioner is not a relative or heir of Debbra L. Winter.
3. Michele Lane, the real estate agent described in the Petition, was in possession of the original estate planning binder at the time of Debbra Winter's death. Ms. Lane turned over the binder to Respondent because she found his name in the estate documents, and could not locate Petitioner's name in the binder. Because Ms. Lane could not find Petitioner's name in the documents and didn't know who he was, she refused to turn the binder over to him. Respondent's attorney has spoken to Ms. Lane and anticipates that she will be a witness in this matter. Ms. Lane stated to Respondent's attorney that Petitioner admitted to her that he never even met Debbra Winter. This information supports the fact that the amendment was destroyed and not in the original estate planning binder.
4. In the absence of the original, there is a legal presumption that the document was revoked. Additionally, pursuant to Probate Code § 6120(b), we have an act of destruction consistent with the intent to revoke. This presumption cannot be overcome based on the Declaration of Morgan Quail and the expected testimony of Michele Lane.
5. Respondent, Christopher Lull, is the successor trustee of the Trust dated 07/16/94 and the primary beneficiary. He had every right to withdraw the money from Bank of America, as Trustee.

Objector prays for an Order:

1. Denying the Petition to Determine Title to and Require Transfer of Property to Trust Regarding Bank Account; and
2. Denying the Petition to Determine Title to and Require Transfer of Property to Trust.

Declaration of Morgan Quail in Support of Objection filed 08/07/13 states:

1. He is Debbra Winter's nephew and probably one of her closest family members. Debbra felt like a bit of an outsider in their family and felt left out. Declarant always tried to include her in his life events and she always seemed grateful to be included.
2. Their family has a lot of drama. Declarant states that he has tried to stay out of it and remain neutral. He believes that this is why Debbra confided in him and spoke to him about things she might not talk about with others.
3. Approximately 2 years ago on Father's Day, Debbra pulled Declarant aside and asked to talk to him. During their conversation, she removed a document titled amendment to trust from her purse and proceeded to tear it up in front of him. She stated that she wanted to keep her money in the family. Declarant also believes she was having conversations with her sister Catherine and father Stanton about this issue as well.
4. At Christmastime later that year, Declarant received a card from Debbra thanking him for the talk on Father's Day.

Joint Status Report filed 12/18/13 provides an outline/summary of the petitions filed in this matter.

First Amended Objection to Petition to Determine Title to and Require Transfer of Property to Trust filed 01/07/14 states:

1. Objector, Christopher Lull, is the son of Debbra L. Winter, deceased, who is the co-settlor and the successor trustee of the STEPHAN F. WINTER and DEBBRA L. WINTER REVOCABLE TRUST (the "Trust") dated 02/16/94.
2. Decedent, Debbra Winter ("Debbra") and her husband Stephan F. Winter ("Stephan") created the Trust dated 02/16/94 in which they were both named as settlors and co-trustees. A purported Amendment to the Trust was executed on 09/14/02.
3. Under the terms of the Amendment, the successor trustee, upon the death of the first of Stephan and Debbra, was named as Dennis Freeman. Further, on the death of the surviving spouse/settlor, the estate was to be distributed to Dennis Freeman, if living, and if not, to Morgan Quail.

Continued on Page 3

4. The purported Amendment to the Trust was not a true and voluntary expression of testamentary intent of the co-settlor and co-trustee, Debbra Winter, but was a result of the control, demands, and undue influence of Stephan F. Winter, Debbra's spouse.
5. Stephan, taking advantage of the confidential and fiduciary relationship between him and his spouse, Debbra, and by reason of the trust and confidence so reposed in Stephan by Debbra, was able to and did influence and control the mind and actions of Debbra and induce her to sign the purported Amendment to the trust which provided, among other things, that all of the assets of the Trust be distributed upon the death of the surviving spouse to Dennis Freeman, who is unrelated to Debbra, and is a cousin of Stephan.
6. Prior to signing the Amendment, Stephan exhibited animosity and opposition to Objector, who is the only child and natural heir of Debbra, and attempted to, and did, alienate Debbra from Objector and induced her to sign the purported Amendment to the Trust excluding Objector as a beneficiary of the Trust, contrary to the terms of the initial Trust dated 02/16/94. As a result of the undue influence, pressure, and control by Stephan, and the alienation that he induced between Debbra and Objector, the Amendment dated 09/14/02, was not the true intent and testamentary wish of Debbra, but was that of her husband, Stephan.
7. After Stephan's death in 2005, Debbra stated her wish, and as so expressed to her family members, including her nephew, Morgan Quail, and her sister, Catherine Quail, that she did not intend to leave her estate, or any part of it, to Dennis Freeman; however, she was unaware of how and what manner to change the disposition and the purported Amendment to the Trust. Debbra was under the mistaken belief that the mere destruction of the Amendment, by tearing it up, resulted in the revocation of the Amendment and would therefore result in the original Trust agreement expressing her true intentions, which included her plan to bequeath and devise all of her trust assets to her direct heirs, including her son, Objector, Christopher Lull. Debbra was unable to do so at the time she signed the Amendment because she was wholly under the influence of Stephan, who proposed and dictated to Debbra the purported Amendment to the Trust. As a result, the Amendment was not the true and voluntary act of Debbra, but was procured as the result of the undue and unreasonable influence and control of Stephan and the mistaken belief thereafter of Debbra that she had taken appropriate actions to restore her true testamentary intent, as expressed in the initial Trust Agreement dated 02/16/94.

Objector, Christopher Lull prays for an Order:

1. Denying the Petition; determining that the purported Amendment to the Trust dated 09/14/02 is not the true testamentary intent of Debbra Winter; and that the terms and conditions of the trust are those set forth in the original testamentary instrument designated the "Trust Agreement" signed 02/16/94.

**Petition to Determine Title to and Require Transfer of Property to Trust Regarding
Bank Account [Prob. C. 850(a)(2)(3), 855, 17200(b)(6)]**

Stephan DOD: 08/09/05	DENNIS FREEMAN , successor trustee, is Petitioner.	NEEDS/PROBLEMS/ COMMENTS: <u>Continued from 01/28/14</u>																																																																					
Debbra DOD: 05/13/13	Petitioner states:																																																																						
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File 4B – Winter																																																																							

Objection filed 08/07/13 by Christopher Lull, Respondent, states:

6. Petitioner does not have standing to bring this Petition. Petitioner is not the trustee because the amendment naming him as trustee was revoked. Morgan Quail witnessed the destruction of the amendment (see *Declaration of Morgan Quail*). Without the amendment, Petitioner is not the trustee or a beneficiary of the Trust and has no vested interest in the Trust.
7. Petitioner is not a relative or heir of Debbra L. Winter.
8. Michele Lane, the real estate agent described in the Petition, was in possession of the original estate planning binder at the time of Debbra Winter's death. Ms. Lane turned over the binder to Respondent because she found his name in the estate documents, and could not locate Petitioner's name in the binder. Because Ms. Lane could not find Petitioner's name in the documents and didn't know who he was, she refused to turn the binder over to him. Respondent's attorney has spoken to Ms. Lane and anticipates that she will be a witness in this matter. Ms. Lane stated to Respondent's attorney that Petitioner admitted to her that he never even met Debbra Winter. This information supports the fact that the amendment was destroyed and not in the original estate planning binder.
9. In the absence of the original, there is a legal presumption that the document was revoked. Additionally, pursuant to Probate Code § 6120(b), we have an act of destruction consistent with the intent to revoke. This presumption cannot be overcome based on the Declaration of Morgan Quail and the expected testimony of Michele Lane.
10. Respondent, Christopher Lull, is the successor trustee of the Trust dated 07/16/94 and the primary beneficiary. He had every right to withdraw the money from Bank of America, as Trustee.

Objector prays for an Order:

3. Denying the Petition to Determine Title to and Require Transfer of Property to Trust Regarding Bank Account; and
4. Denying the Petition to Determine Title to and Require Transfer of Property to Trust.

Declaration of Morgan Quail in Support of Objection filed 08/07/13 states:

5. He is Debbra Winter's nephew and probably one of her closest family members. Debbra felt like a bit of an outsider in their family and felt left out. Declarant always tried to include her in his life events and she always seemed grateful to be included.
6. Their family has a lot of drama. Declarant states that he has tried to stay out of it and remain neutral. He believes that this is why Debbra confided in him and spoke to him about things she might not talk about with others.
7. Approximately 2 years ago on Father's Day, Debbra pulled Declarant aside and asked to talk to him. During their conversation, she removed a document titled amendment to trust from her purse and proceeded to tear it up in front of him. She stated that she wanted to keep her money in the family. Declarant also believes she was having conversations with her sister Catherine and father Stanton about this issue as well.
8. At Christmastime later that year, Declarant received a card from Debbra thanking him for the talk on Father's Day.

Notice of Hearing on Demurrer and Demurrer of Respondent Dennis Freeman to Petition to Determine Validity of Purported Trust, for Order Determining Interest in Trust Property and for Reformation; Memorandum of Points and Authorities in Support of Demurrer to Petition Without Leave to Amend

Stephan DOD: 08/09/05		<p>NEEDS/PROBLEMS/COMMENTS:</p> <p>Examiner Notes are not prepared for this matter.</p>	
Debbra DOD: 05/13/13			
Cont. from			
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<input type="checkbox"/>	Citation		<input type="checkbox"/>
<input type="checkbox"/>	FTB Notice	<input type="checkbox"/>	
		<p>Reviewed by: JF</p> <p>Reviewed on: 03/05/14</p> <p>Updates:</p> <p>Recommendation:</p> <p>File 4C – Winter</p>	

4C

4D	Stephen & Debra Winter Revocable Trust	Case No. 13CEPR00564
Atty	Pape, Jeffrey B. (for Dennis Freeman – Successor Trustee under Amendment/Petitioner)	
Atty	Shahbazian, Steven L. (for Christopher Lull – son of Debra Winter/Respondent-Objector)	

Notice of Motion and Motion for Judgment on the Pleadings; Memorandum of Points and Authorities in Support Thereof; Declaration of Jeffrey B. Pape [CCP 438]

Age:			NEEDS/PROBLEMS/COMMENTS:
DOD:			
Cont. from 120913, 010614, 012814			
	Aff.Sub.Wit.		
	Verified		
	Inventory		
	PTC		
	Not.Cred.		
	Notice of Hrg		
	Aff.Mail		
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	Pers.Serv.		
	Conf. Screen		
	Letters		
	Duties/Supp		
	Objections		
	Video Receipt		
	CI Report		
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	Order		
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	Status Rpt		
	UCCJEA		
	Citation		
	FTB Notice		
			<p>Examiner Notes are not prepared for this matter.</p>
			Reviewed by: JF
			Reviewed on: 03/05/14
			Updates:
			Recommendation:
			File 4D – Winter

4D

**Petition to Determine Title to; Require Transfer to and Impose Constructive Trust
Over Property [Prob. C. 850(a)(2), (3), 855, 17200(b)(6)]**

Stephan DOD: 08/09/05	DENNIS FREEMAN , successor Trustee, is Petitioner.	NEEDS/PROBLEMS/COMMENTS:
Debbra DOD: 05/13/13	Petitioner states:	CONTINUED FROM 01/28/14
	<ol style="list-style-type: none"> Stephan F. Winter and Debbra L. Winter ("Settlers") executed the Stephan F. Winter and Debbra L. Winter Revocable Trust (the "Trust") on 02/16/94 in their capacity as Settlers and initial Trustees. The Trust was amended on 09/14/02. Stephan Winter died 08/09/05 and Debbra Winter died 05/13/13. Petitioner is the named successor trustee of the Trust. On 08/30/13, the Court appointed Bruce Bickel as temporary trustee of the Trust. This Petition concerns the conversion of Bank of America account ending in 3919 with a balance of over \$565,000.00 which was an asset of the Trust. Petitioner alleges that Respondent, Christopher Lull, removed the entire balance of the Bank of America account on or about 06/26/13 and transferred it to his personal account. Petitioner alleges that, among other things, Christopher Lull used \$125,000.00 of the wrongfully obtained funds to pay down a promissory note and deed of trust on his personal residence. These funds were paid to First Northern Bank of Dixon, California on or about 01/27/13. Constructive Trust. The real property which was subject to the promissory note and deed of trust that Christopher Lull applied \$125,000.00 in payment is located on Ophir Road in Auburn, CA (legal description provided). 	<ol style="list-style-type: none"> Need Order.
Cont. from 120913, 010614, 012814		
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<input type="checkbox"/> Citation		
<input type="checkbox"/> FTB Notice		
	Petitioner prays for an Order: <ol style="list-style-type: none"> Declaring that Respondent Christopher Lull holds in constructive trust the real property on Ophir Road in Auburn, CA, described in the Petition; Authorizing the temporary trustee to take possession of and sell the real property described above to recover the \$125,000.00 plus attorneys' fees and costs in so doing; Directing Respondent to pay Petitioner his attorneys' fees and costs; and Awarding Petitioner with exemplary damages against Respondent according to proof. 	
	<p style="text-align: center;">Continued on Page 2</p>	
		Reviewed by: JF
		Reviewed on: 03/05/14
		Updates:
		Recommendation:
		File 4E – Winter

Response to Petition to Determine Title To, Require Transfer to and Impose Constructive Trust Over Property filed 12/06/13 by Respondent, Christopher Lull, states:

1. Respondent admits that the STEPHAN F. WINTER AND DEBBRA L. WINTER REVOCABLE TRUST was created on 02/16/94 by Stephan and Debbra Winter.
2. Respondent denies that the Amendment dated 09/14/02 is a valid and effective trust document, or "Amendment" and that said Amendment does not reflect the true intent of the co-settlor and trustee, Debbra Winter.
3. Respondent denies the validity of the purported "Amendment" and, therefore, denies that Dennis Freeman is a successor trustee of the Trust.
4. Respondent denies that Fresno County is the proper venue for this action. And states that as successor trustee of the Trust the appropriate venue for this action should be in Sacramento County pursuant to Probate Code § 17002(b)(1).
5. Respondent admits that the Bank of America account described in the Petition was an asset of the Trust. Respondent denies that he has "wrongfully" taken or converted any sums from said account, or any other asset of the alleged trust, as said Amendment to the Trust is invalid and ineffective, and that the Trust, therefore, provides that Respondent is the sole successor trustee and beneficiary of the Trust.
6. Respondent admits that he has an interest in real property in Auburn, CA described in the Petition, but denies that there is any wrongful application of funds for any payment on that real property.

Affirmative Defenses:

1. The Petition fails to state facts sufficient to constitute a valid cause or causes of action against Respondent.
2. There is no basis for a "constructive trust" over the real property described in the Petition in that said real property is not, and was not, an asset of the Trust and thereby the remedy of "constructive trust" is not available under Civil Code §§ 2223 and 2224 as the Trust has not right, title, claim, or interest in the real property. (Citation provided)
3. The Petition has no ground to assert, nor is it alleged, that there is any basis for a claim of "exemplary damages".
4. The Petitioner fails to allege any statutory grounds, or any other legal right, for attorney's fees in the filing of this Petition and that attorney's fees are not recoverable to the Petitioner pursuant to Civil Code § 1021 and 1026.

Respondent prays for an Order:

1. That the Petition and each claim therein be dismissed against Respondent and that Petitioner take nothing by reason of his complaint; and
2. For costs incurred herein.

Stephan DOD: 08/09/05		The following petitions have been filed or are pending in this matter:	NEEDS/PROBLEMS/COMMENTS: Supplemental Joint Status Report filed 01/31/14 provides an outline/summary of the petitions filed in this matter.
Debbra DOD: 05/13/13			
Cont. from 010614, 012814		<ol style="list-style-type: none"> Petition to Determine Title To and Require Transfer of Property to Trust (Page 4A) Petition to Determine Title To and Require Transfer of Property to Trust re Bank Account (Page 4B) Notice of Hearing on Demurrer and Demurrer of Respondent Dennis Freeman to Petition to Determine Validity of Purported Trust, for Order Determining Interest in Trust Property and for Reformation; Memorandum of Points and Authorities in Support of Demurrer to Petition Without Leave to Amend Notice of Motion and Motion for Judgment on the Pleadings Petition to Determine Title To; Require Transfer To and Impose Constructive Trust Over Property (Page 4E) Petition to Compel Christopher Lull to Redress Breach of Trust by Payment of Money or Otherwise and for Double Damages (Page 4G) Petition to Determine Validity of Purported Trust, for Order Determining Interest in Trust Property and for Reformation (filed by Respondent Christopher Lull) Order to Show Cause Re Contempt filed by Dennis Freeman – Page 4I) Notice of Motion for Order Compelling Responses to Form Interrogatories (filed by Dennis Freeman and set for hearing on 04/08/14) 	
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Reviewed by: JF			
Reviewed on: 03/05/14			
Updates:			
Recommendation:			
File 4F – Winter			

Atty Pape, Jeffrey B. (for Dennis Freeman – Successor Trustee – Petitioner)

Atty Shahbazian, Steven L. (for Christopher Lull – Respondent and Objector)

**Petition to Compel Christopher Lull to Redress Breach of Trust by Payment of
Money or Otherwise and for Double Damages**

Stephen Winter DOD: 8-9-05		DENNIS FREEMAN , Successor Trustee, is Petitioner.	NEEDS/PROBLEMS/COMMENTS: <u>CONTINUED FROM 01/28/14</u> 1. Need order.
Debbra Winter DOD: 5-13-13			
Cont. from 012814		<p>Petitioner states: Petitioner Dennis Freeman is the sole beneficiary and named successor trustee of the trust pursuant to the 9-14-02 amendment. However, Respondent CHRISTOPHER LULL, with full knowledge of said trust amendment, wrongfully exercised powers under the trust instrument as the purported trustee as described below. On 8-30-13, the Court appointed BRUCE BICKEL as temporary trustee pending resolution of these matters.</p> <p>Petitioner states Respondent wrongfully procured Bank of America account xx3919 with a balance of over \$565,000, which was an asset of the trust, removed the entire balance on or about 6-26-13, and transferred it to a new trust account at Bank of America naming himself as trustee, without including the 9-14-02 amendment for the bank, in furtherance of his scheme. Petitioner states Respondent then transferred the money belonging to the trust to a personal bank accounts at Bank of America, Chase Bank, and/or business accounts at First Northern Bank of Dixon, California and paid a number of personal debts and/or non-trust related expenditures all to benefit himself. See list provided in petition.</p> <p>Petitioner states on or about 8-8-13, this Court ordered Respondent to preserve the assets of the trust. On 10-15-13, Respondent testified that all of the trust assets have been spent, based on his name is the only one in the trust. Petitioner states that as of 8-8-13, Respondent still had at least \$377,500 of trust funds on deposit in his personal and business accounts. These sums were still trust assets despite his efforts to conceal these monies. This was an egregious and intentional violation of the Court's order and was done for the sole purpose of defeating the recovery of the trust assets from him.</p>	
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		SEE ADDITIONAL PAGES	
		Reviewed by: skc/JF Reviewed on: 03/05/14 Updates: Recommendation: File 4G - Winter	

Page 2

Petitioner states Respondent was ordered on 8-30-13 to provide an accounting of the expenditure of the trust funds by him. He has refused and continues to refuse to do so consistent with his efforts to abscond with the trust funds.

Petitioner prays for an order as follows:

1. **Ordering Christopher Lull to redress the breaches of trust described above by payment of all sums wrongfully misappropriated from the trust and reimbursing the trust for all losses occasioned by his wrongful actions;**
 2. **Surcharging Christopher Lull twice the value of the property wrongfully misappropriated from the trust according to proof pursuant to Probate Code §859;**
 3. **For attorneys' fees;**
 4. **For costs herein;**
 5. **For such orders as the Court deems necessary and proper.**
-

Response and Objection filed 1-17-14 by Christopher Lull states:

Respondent denies that Petitioner is the successor trustee of the trust and denies that he "wrongfully exercised" the powers under the trust instrument identified as the "Winter Trust dated February 16, 1994." Respondent is the rightful successor trustee of said trust.

Respondent further denies that Fresno County is the appropriate venue for this proceeding and that the appropriate venue is the County of Placer.

Respondent denies that he has wrongfully procured any funds from the trust and that under the terms of the trust he is the rightful successor trustee and beneficiary. Further the allegations in Paragraph 6 are defective and should be stricken as material matters alleged on hearsay information not within Petitioner's personal knowledge. Authority provided.

Respondent denies he has "wrongfully" taken or "absconded" with assets of the trust and alleges that he is the successor trustee and beneficiary. Further, any said claims of violation of the trust, or wrongful misappropriation of trust funds pursuant to §850(a)(3) are insufficient and premature. Objection and a request to strike is hereby made to the recitation of testimony at a prior hearing by the respondent as the Court has made no final judgment or order in these matters; therefore, such testimony should not be considered by the Court, or receive judicial notice under Evidence Code §452, as such testimony is not an order, finding of fact or judgment of the court. Authority provided.

Respondent alleges there are not sufficient grounds for "surcharging" the responding party herein for "double damages" as there has not been any "bad faith" wrongful taking by this responding party.

Respondent further objects to any claim for "attorney's fees." There are no grounds alleged to claim same and this action is subject to the provisions of Civil Code §1021.

Respondent prays that the petition to "redress breach of trust" be dismissed; that none of the relief as requested therein be granted; for costs of suit incurred.

4H Stephen & Debbra Winter Revocable Trust

Case No. 13CEPR00564

Atty Pape, Jeffrey B. (for Dennis Freeman – Respondent to this Petition)

Atty Shahbazian, Steven L. (for Christopher Lull – Petitioner)

Petition to Determine Validity of Purported Trust, for Order Determining Interest in
Trust Property and for Reformation

Stephan DOD: 08/09/05		NEEDS/PROBLEMS/COMMENTS: Examiner Notes are not prepared for this matter.
Debbra DOD: 05/13/13		
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Reviewed by: JF		
Reviewed on: 03/05/14		
Updates:		
Recommendation:		
File 4H – Winter		

4H

Petition to Determine Succession to Real Property (Prob. C. 13151)

DOD: 10/23/2013		DEBRA L. HALL , daughter, is petitioner. 40 days since DOD. No other proceedings. Will dated 1/5/10 devises entire estate to Debra L. Hall. I & A - \$70,000.00 Petitioner requests court determination that Decedent's interest in real property pass to her pursuant to Decedent's Will.	NEEDS/PROBLEMS/COMMENTS: Continued from 2/10/14. Minute order states Ms. Edwards [Georgie Edwards, daughter] who is appearing via CourtCall objects to the petition. Ms. Edwards is directed to lodge her written objections with the court. As of 3/4/14 written objections have not been filed.	
Cont. from 012714, 021014				
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<input type="checkbox"/>	Citation			
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			Reviewed by: KT Reviewed on: 3/5/14 Updates: Recommendation: File 5 – Hall	

Probate Status Hearing Re: Failure to File a First Account or Petition for Final Distribution

DOD: 06/03/2003		<p>DALE ALLEN CRUTCHFIELD, son, was appointed Executor with full IAEA without bond on 08/26/2003.</p> <p>Letters issued on 08/26/2003.</p> <p>Inventory and Appraisal was filed on 02/03/2004 shows an estate valued at \$309,517.57 consisting of real property.</p> <p>Notice of Status Hearing was mailed to John Garland and Dale Allen Crutchfield on 11/07/2013.</p> <p>Former Status Report filed 01/08/2014 states on 01/07/2014 Counsel met with the Executor and Ernest Crutchfield regarding the Probate Status Hearing. The Executor advised counsel that he has not lived at the decedent's residence since May 2008 and that he did not receive the Notice of Status Hearing. When counsel asked the Executor if he received counsels previous letters regarding the estate, the Executor acknowledged receipt of counsel's letters prior to May 2008 and stated that he had "no good reason" for failing to respond. The Executor advised counsel that he was "overwhelmed" with the responsibilities of managing the family business, Crutchfield Pest Control, during a very difficult business financial climate and the additional responsibilities of the Executor of his mother's estate. Both the Executor and Ernest advised counsel that business has improved somewhat, and the Executor, with the assistance of Ernest is now prepared to close their mother's estate.</p> <p>The Executor advised counsel that he believes he has most of the estate records stored in his garage and will attempt to locate same prior to the Status Hearing and advise counsel of the results of the search. Both Dale Allen Crutchfield and Ernest Douglas Crutchfield have indicated to counsel that they will appear at the Status Hearing. Executor apologizes to the Court for failure to close his mother's estate in a timely manner.</p> <p>Counsel needs to review the estate files in the Executor's possession to determine what actions must be taken to settle the estate and bring it conclusion. The previously prepared Petition for Final Distribution on Waiver of Accounting can be updated and filed within approximately six weeks, if the Court permits.</p>	<p>NEEDS/PROBLEMS/COMMENTS:</p> <p>1. Need First Account or Petition for Final Distribution or current written status report pursuant to Local Rule 7.5 which states in all matters set for status hearing verified status reports must be filed no later than 10 days before the hearing. Status Reports must comply with the applicable code requirements. Notice of the status hearing, together with a copy of the Status Report shall be served on all necessary parties.</p>
Cont. from 011014			
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Aff. Posting			
Status Rpt			
UCCJEA			
Citation			
FTB Notice		<p>Reviewed by: LV</p> <p>Reviewed on: 03/05/2014</p> <p>Updates:</p> <p>Recommendation:</p> <p>File 7 – Crutchfield</p>	

Age: 2		<u>NO TEMPORARY IN PLACE</u>		NEEDS/PROBLEMS/COMMENTS:	
		DENISE VALENZUELA, maternal great-aunt, is Petitioner.		1. If diligence is not found, need proof of service at least 15 days before the hearing of Notice of Hearing with a copy of the Petition for Guardianship <u>or</u> Consent & Waiver of Notice for:	
		Father: JOSE MIRANDA – Declaration of Due Diligence filed 01/15/14		- Jose Miranda (father) – personal service required	
Cont. from		Mother: DESTINY ANGEL – Consent & Waiver of Notice filed 01/15/14		- Paternal grandparents – service by mail is sufficient	
	Aff.Sub.Wit.				
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	Inventory				
	PTC				
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✓	Notice of Hrg				
			Paternal grandparents: UNKNOWN – Declarations of Due Diligence filed 01/15/14		
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				Reviewed by: JF	
				Reviewed on: 03/05/14	
				Updates:	
				Recommendation:	
				File 10 – Miranda	

	NO TEMP REQUESTED		NEEDS/PROBLEMS/COMMENTS:
	<p>DANIEL and SHERRON PAGLIOTTI, Parents, are Petitioners and request appointment as Co-Conservators of the Person with medical consent powers.</p>		
	Voting rights affected		<p><u>Court Investigator advised rights on 2-11-14</u></p>
	A Capacity Declaration was filed 2-3-14.		<p><u>Voting rights affected – need minute order</u></p>
	<p>Petitioners state the proposed Conservatee has Down syndrome and is a client of CVRC. He is unable to manage his personal care and cannot be left alone for safety reasons. His physician has determined that he is not competent to make decisions regarding his health care.</p>		
	Court Investigator Jennifer Daniel filed a report on 3-3-14.		
	Aff.Sub.Wit.		
✓	Verified		
	Inventory		
	PTC		
	Not.Cred.		
✓	Notice of Hrg		
✓	Aff.Mail	W	
	Aff.Pub.		
	Sp.Ntc.		
✓	Pers.Serv.	W	
✓	Conf. Screen		
✓	Letters		
✓	Duties/Supp		
	Objections		
✓	Video Receipt		
✓	CI Report		
	9202		
✓	Order		
	Aff. Posting		
	Status Rpt		
	UCCJEA		
✓	Citation		
	FTB Notice		
			Reviewed by: skc
			Reviewed on: 3-5-14
			Updates:
			Recommendation:
			File 11 – Pagliotti

	TEMP GRANTED EX PARTE EXPIRES 3-10-14	NEEDS/PROBLEMS/COMMENTS:
	GENERAL HEARING 4-29-14	
	LOIS GEORGINE FERRIS and HERMAN RAY FERRIS , Maternal Grandmother and Step-Grandfather, are Petitioners.	
<input type="checkbox"/> Aff.Sub.Wit.		
✓ Verified	Father (all minors): UNKNOWN	1. Need Form GC-020(P) "Proof of Personal Service of Notice of Hearing – Guardianship or Conservatorship" showing personal service on the mother at least five Court days prior to the hearing per Probate Code §2250(e).
<input type="checkbox"/> Inventory	Mother: REBECCA DAWN FRENCH	
<input type="checkbox"/> PTC		
<input type="checkbox"/> Not.Cred.	Paternal grandparents (all minors): Unknown	(Petitioners used an incorrect attachment to the Notice of Hearing form that appears to indicate mailed service, so it is unclear if the mother has been properly served.)
✓ Notice of Hrg		
<input type="checkbox"/> Aff.Mail	Maternal Grandfather: Not listed	
<input type="checkbox"/> Aff.Pub.		
<input type="checkbox"/> Sp.Ntc.	Petitioners state Dustin has been in in Petitioners' care since January 2013 and they have had Jocelynn and Divana since February 2014, when the mother was arrested. CPS placed the children with Petitioners and advised them to seek guardianship. Petitioners state the mother has extensive criminal and CPS history and the fathers are unknown. The minors have settled in with Petitioners and feel safe and secure in their home. Their teachers have noted huge differences since they have lived with Petitioners. Temporary guardianship is needed so that they will not be placed in the foster care system.	2. Need consent of minor Dustin or proof of personal service of Notice of Hearing with a copy of the temp petition at least five court days prior to the hearing per Probate Code §2250(e).
<input type="checkbox"/> Pers.Serv.	X	
✓ Conf. Screen		
✓ Letters		
✓ Duties/Supp		
<input type="checkbox"/> Objections		
<input type="checkbox"/> Video Receipt		
<input type="checkbox"/> CI Report		
<input type="checkbox"/> 9202		
✓ Order		3. Petitioners state the fathers of all three of the children are unknown, but have not provided a declaration of due diligence regarding efforts to identify, locate and serve. The Court may require further diligence or service.
<input type="checkbox"/> Aff. Posting		Reviewed by: skc
<input type="checkbox"/> Status Rpt		Reviewed on: 3-5-14
✓ UCCJEA		Updates:
<input type="checkbox"/> Citation		Recommendation:
<input type="checkbox"/> FTB Notice		File 12 – French